LIEW KON FATT

v.

FONG KOK WING

HIGH COURT MALAYA, KUANTAN
ABDUL RAZAK J
[CIVIL SUIT NO. 96 OF 1976]
12 MARCH 1982

CONTRACT: *Goods sold and delivered - Claim for services rendered - Counterclaim by defendant for cost of repair and transport - Counterclaim by plaintiff for loss due to failure of defendant to repair and recovery of goods - Whether claims proved.*

This was the plaintiff's claim for RM1,289.51 for services rendered and for goods sold and delivered. The defendant counterclaimed for cost of repair to the plaintiff's caterpillar in the sum of RM13,590 including the cost of dismantling and remantling with old parts, the cost of transport from the plaintiff's premises to the defendant's premises and storage charges. The plaintiff denied the defendant's contentions and stated that the defendant had failed to complete the repair to the tractor. The plaintiff then counterclaimed for loss of use and for the return of the tractor duly repaired failing which the cost of the tractor itself. At the trial, the defendant conceded to the plaintiff's claim for RM1,289.51 but he maintained his counterclaim and refused to return the tractor claiming that the plaintiff knew at the time of the purchase of the tractor that it was scrap iron and was not worth repairing.

Held:

[1] The defendant's explanation is unacceptable. If the defendant knew that the tractor was not worth repairing and yet took upon himself to do work on the tractor then he must himself bear the necessary consequential loss. On the other hand, it is also difficult to accept that the plaintiff suffered loss since his conduct was consistent with one who at some stage after delivery to the defendant, knew like the defendant that the tractor was nothing more than scrap. In the circumstances, both counterclaims are dismissed. The plaintiff is entitled to repossession of the tractor at his own cost.

[Counterclaims dismissed. Plaintiff entitled to repossess tractor at own cost.]

For the plaintiff - M/s. S. Sivasubramanian
For the defendant - M/s. Balendran & Chong

JUDGMENT

Abdul Razak J:

The plaintiff in the Magistrate's Court claimed a sum of RM1,289.51 for services rendered and for goods sold and delivered.

The defendant denied the claim. He counterclaimed for cost of repair to the plaintiff's caterpillar in the sum of RM13,590 including the cost of dismantling and remantling with old parts as new parts were not supplied, the cost of transport from the plaintiff's premises to the defendant's premises and storage charges. The plaintiff in reply said that the defendant had failed to carry out the repair. He had failed to complete the repair. He was not responsible for the supply of spare parts. He said the defendant undertook to obtain the necessary spare parts for the repair to the said tractor. He alleged that the tractor was dismantled and placed outside the defendant's premises. The defendant was not entitled to storage fees as the

tractor was not stored in the defendant's premises. He had asked for the return of the tractor but the defendant had refused or failed to return it duly repaired. He counterclaimed for loss of use from June 1973 till judgment and from judgment till the return of the vehicle and lastly to return the said vehicle duly repaired or failing which the cost of the tractor itself.

The suit was initially filed at the Magistrate's Court but on application made by the defendant, considering the amount involved it was duly transferred to the High Court, the claim by the defendant being more than RM10,000.

At the trial the plaintiff's claim for the sum of RM1,289.51 was conceded by the defendant. He however maintained his counterclaim that the plaintiff owed him RM13,590 as to the cost of repair to the caterpillar. He refused to return the tractor and resisted the plaintiff's claim as to the cost of the tractor.

The defendant said that it was he who advised the plaintiff to buy the tractor initially and when it was bought it was scrap iron. How could the defendant ever claim against the plaintiff then for repairing something which he knew was not worth repairing. The defendant said that the plaintiff has insisted on repairing it, nevertheless. I do not think I could accept that explanation, for the simple reason that no right thinking person would have been so fool hardy. If the defendant had known this fact and yet took upon himself to do work on the tractor then he must himself bear the necessary consequential loss.

On the other hand it is difficult also to accept that the plaintiff had suffered loss because of the failure of the defendant to repair the tractor since his conduct was more consistent with one who had not suffered loss. Indeed his conduct was consistent with one who at some stage after its delivery to the defendant, knew like the defendant himself that the tractor was nothing more nothing less than a scrap. If that construction is not valid then the plaintiff has to explain why he did not think it necessary to sue the defendant in the first place when the cause of action arose even before his present claim had ensued. Why has he to bring the claim only after the defendant had counterclaimed against his claim. If the allegation of the plaintiff is true then it is rather strange that fact was not even mentioned in the plaintiff's letter to the defendant in P4 in December 1974 when the plaintiff notified the defendant of his present claim for goods sold and delivered and yet according to the plaintiff at that time he had already suffered the loss from his tractor for 1½ years. That the amount of loss is almost ten times the value of his suit makes it sound even more remarkable that he had initially refrained from filing an action against the defendant.

I would in the circumstances dismiss both the defendant's counterclaim and the plaintiff's counterclaim to the defendant's counterclaim. I would also order that the parties pay their own costs. The plaintiff is entitled to repossess the tractor at his own cost.

Also found at [1983] 1 CLJ 306